

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Civil Action No. 92 C 5354
)	(Hart, J.)
ROBERT R. KRILICH, <u>et al.</u> ,)	
)	
Defendants.)	
)	

MODIFICATION TO CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, and Defendants Robert R. Krilich, Krilich Companies, Inc., Riverwoods Development Corp., Lakemoor Country Club, Inc., Austin State Bank Trust, not individually, but as Trustee under the Trust Agreement dated December 18, 1968, and known as Trust No. 4580, Manufacturers' Affiliated Trust Co., not individually, but as Trustee under the Trust Agreements dated July 30, 1982, and known as Trust Nos. 866 and 867, f/k/a Affiliated Bank/Franklin Park f/k/a First State Bank & Trust of Franklin Park (collectively "Krilich") entered into a Consent Decree in 1992 (the "1992 Decree"), which resolved the United States' claims in the complaint against Krilich under Sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311, 1344;

WHEREAS, among other things, the 1992 Decree requires Krilich to construct a mitigation pond and to meet specified wetland performance standards;

WHEREAS, Krilich has not fully met the performance standards at the mitigation pond pursuant to the requirements of the 1992 Decree; and

WHEREAS, the United States and Krilich have consented to the entry of this Modification to Consent Decree without a hearing on the issues, and the United States and

Krilich hereby stipulate and agree that this Modification to Consent Decree should be entered.

NOW, THEREFORE, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION

1. In the 1992 Consent Decree, this Court retained jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1345 and 1355.

II. APPLICABILITY

2. The provisions of this Modification to Consent Decree shall apply to and be binding upon the United States and Krilich, and upon Krilich's officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of Krilich, to the same extent as set forth in the 1992 Decree.

III. MODIFICATION

3. Paragraph 30 of the 1992 Decree is hereby modified as follows:
- a. Defendants shall purchase ½ acre of wetlands at a U.S. EPA approved mitigation bank within 90 days of entry of the Modification of the Consent Decree.
 - b. Defendants shall provide proof of the purchase made in Paragraph 3a by submitting certification verifying that such purchase has occurred, including copies of both sides of the cancelled check and any available real estate documents, such a deed, to U.S. EPA within 30 days after closing.
 - c. Defendants' compliance with Paragraphs 30a and b is equivalent to

meeting the final performance standards for the mitigation pond as those performance standards are referenced in Section XIII, Termination Paragraph 86, of the 1992 Decree, provided that the 1992 Consent Decree shall not be terminated and the success criteria of the 1992 Decree will remain in full force and effect unless Krilich has also complied fully with all obligations specified in the parties' separate Settlement Agreement, which is attached hereto as Exhibit 1.

IV. OTHER PROVISIONS OF 1992 DECREE

4. All other provisions of the 1992 Decree remain in full force and effect as provided therein, and the parties have agreed to no other modification to the 1992 Decree other than what is expressly set forth herein

V. NOT A PERMIT

5. This Consent Decree Modification is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. Nor does this Modification relieve Krilich of any obligation to apply for, obtain and comply with the requirements of any new or existing Section 404 permit.

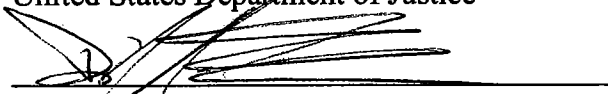
VI. AUTHORITY AND COSTS

6. The undersigned are authorized to fully bind the parties they represent to the terms of this Consent Decree Modification.
7. Each side is to bear its own costs and fees with respect to this Consent Decree Modification.

Respectfully submitted:

FOR PLAINTIFF, THE UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

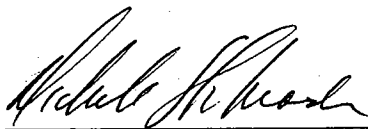


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2/13/2006
Dated

United States v. Krilich, Civil Action No. 92-C-5354 (N.D. Ill.): Modification to Consent Decree

PATRICK FITZGERALD
United States Attorney
Northern District of Illinois



MICHELE S. SCHROEDER
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2/16/06
Dated

United States v. Krilich, Civil Action No. 92-C-5354 (N.D. Ill.): Modification to Consent Decree


GRANTA Y. NAKAYAMA

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Office of Enforcement and Compliance Assurance
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1-25-06
Dated


THOMAS V. SKINNER

Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

11-22-05
Dated

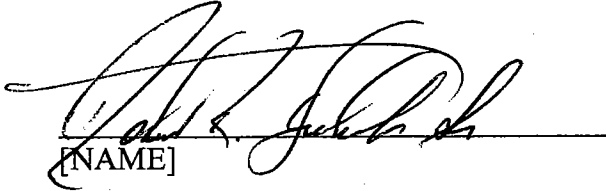

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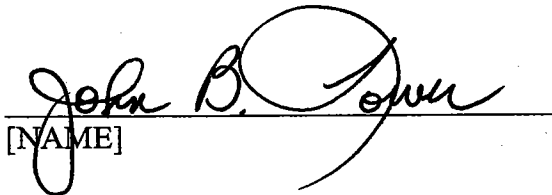
10-20-05
Dated

United States v. Krilich, Civil Action No. 92-C-5354 (N.D. Ill.): Modification to Consent Decree

FOR DEFENDANT, KRILICH ET AL.


[NAME]

9/28/05
Dated


[NAME]

10-13-2005
Dated

ATTACHMENT 2

SETTLEMENT AGREEMENT

WHEREAS, the United States of America as Plaintiff, and Robert R. Krilich, Krilich Companies, Inc., Riverwoods Development Corp., Lakemoor Country Club, Inc., Austin State Bank Trust, not individually, but as Trustee under the Trust Agreement dated December 18, 1968, and known as Trust No. 4580, Manufacturers' Affiliated Trust Co., not individually, but as Trustee under the Trust Agreements dated July 30, 1982, and known as Trust Nos. 866 and 867, f/k/a Affiliated Bank/Franklin Park f/k/a First State Bank & Trust of Franklin Park (collectively "Krlich"), as Defendants, entered into a Consent Decree in 1992 (the "1992 Decree"), in United States v. Krlich, et al., C.A. No. 92 C 5354 (N.D. Ill.), which resolved the United States' claims in the complaint against Krlich under Sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311, 1344;

WHEREAS, among other things, the 1992 Decree requires Krlich to construct a mitigation pond and to meet specified wetland performance standards;

WHEREAS, Krlich has not fully met the performance standards at the mitigation pond pursuant to the requirements of the 1992 Decree;

WHEREAS, the United States previously obtained a penalty of \$1,257,500 against Krlich for his failure to meet the 1992 Decree's deadlines for planting at the mitigation pond;

WHEREAS, the \$1,257,500 penalty has been the subject of several appeals to the United States Court of Appeals for the Seventh Circuit, all of which have been resolved in the United States' favor;

WHEREAS, after the last such appeal, in October 2003, the United States District Court for the Northern District of Illinois released to the United States the sum of \$1,713,515.05 representing the funds that Krlich had deposited in the registry of the court along with accrued

interest;

WHEREAS, Krilich has appealed the District Court's release of these funds to the Seventh Circuit;

WHEREAS, the proceedings in the appeal have been stayed while the parties undertook settlement discussions under the auspices of the Circuit Mediator; and

WHEREAS, the parties wish to resolve the appeal as well as Krilich's failure to meet the success criteria at the mitigation pond without further litigation.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. The United States and Krilich have agreed to a modification of the 1992 Decree that requires Krilich to purchase ½ acre of wetland at a U.S. EPA approved mitigation bank.
2. The Consent Decree Modification provides that Krilich's purchase of the ½ acre of wetland will be equivalent to Krilich's meeting the 1992 Decree's performance standards at the mitigation pond.
3. The Consent Decree Modification is set forth in a separate document which will be lodged in the United States District Court for the Northern District of Illinois so that the United States may make the Consent Decree Modification available for public comment under 28 C.F.R. § 50.7.
4. If the District Court enters the Consent Decree Modification, Krilich will be required to purchase ½ acre of wetland and provide EPA with proof of the purchase as specified in the Consent Decree Modification.
5. Once the District Court enters the Consent Decree Modification, Krilich shall

voluntarily dismiss the appeal in Krilich v. United States, No. 03-3669 (7th Cir.), with prejudice. Each party will bear its own costs and fees with respect to this appeal.

6. Krilich expressly and voluntarily agrees that he will take no further action of any kind whatsoever, including but not limited to any further appeals or any motions or original actions in any judicial or administrative forum to be relieved from the penalty judgment at issue in Krilich v. United States, No. 03-3669 (7th Cir.).

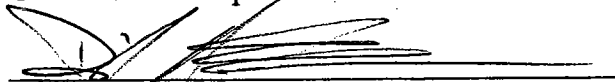
Krilich acknowledges that the dismissal of the appeal in Krilich v. United States, No. 03-3669 (7th Cir.), and his agreement to take no further action of any kind whatsoever to be relieved from the penalty judgment is in partial consideration for the United States' agreement to consent to amend the 1992 Decree, subject to the requirements of 28 C.F.R. § 50.7, in a manner that will allow the original 1992 Decree to be terminated without Krilich fully achieving the success criteria of the original 1992 Decree.
7. After Krilich provides EPA with proof of the purchase of ½ acre of wetland as specified in the Consent Decree Modification and after Krilich has dismissed the appeal in Krilich v. United States, No. 03-3669 (7th Cir.), then any party may move to terminate the amended/modified Consent Decree in United States v. Krilich, et al., C.A. No. 92-C-5354 (N.D. Ill.), and the non-moving party will not oppose the motion, provided that Krilich must also comply with the obligations contained in paragraph 6 of this Settlement Agreement.
8. Each party will bear its own costs and fees in the appeal in Krilich v. United

States, No. 03-3669 (7th Cir.).

9. The undersigned are authorized to fully bind the parties they represent to the terms of this Settlement Agreement.

FOR THE UNITED STATES OF AMERICA:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice



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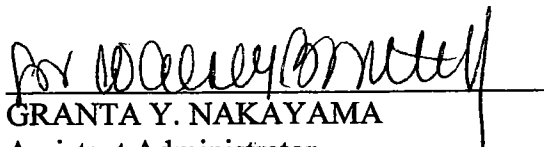
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PATRICK FITZGERALD
United States Attorney
Northern District of Illinois



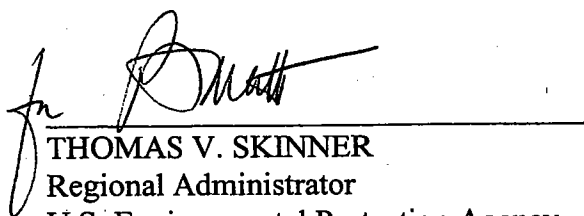
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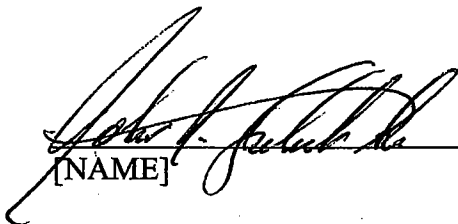
11-22-05
Dated


DEBORAH A. CARLSON

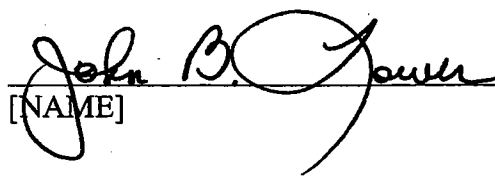
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10-20-05
Dated

FOR KRILICH, ET AL.


[NAME]

9/28/05
Dated


[NAME]

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